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September 18, 2014

BY E-MAIL AND ECF

Hon. Richard J. Sullivan
United States District Judge
United States District Court
for the Southern District of New York
40 Foley Square, Room 2104
New York, New York 10007
sullivanysdchambers@nysd.uscourts.gov

Re: Lehman Brothers Holdings Inc., et al. v.
JPMorgan Chase Bank, N.A., No. 11-cv-06760

Dear Judge Sullivan:

We represent JPMorgan Chase Bank, N.A. ("JPMorgan"), defendant in the above-captioned adversary proceeding. We write in response to plaintiffs' letter of September 17, 2014, seeking clarification of the Court's scheduling order dated August 11, 2014 (the "Order").

The Order permits both parties to submit (1) "a total of eight affidavits, which shall not exceed fifteen double-spaced pages," and (2) "a total of twenty-five exhibits, including exhibits attached to an affidavit, in support of or in opposition to any motion . . . [and] limited to twenty-five pages." Order at 2. The Order further explains that "documents that have already been docketed, such as the Complaint, need not be re-submitted as exhibits." *Id.*

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Abiding by the Order, JPMorgan submitted in support of its motion for summary judgment only a single substantive affidavit and a single declaration attaching sixteen exhibits. JPMorgan's sixteen exhibits were attached to the Declaration of Amy R. Wolf ("Wolf Declaration," ECF No. 53) and were each twenty-five pages or less, with several of the exhibits containing substantially fewer pages than the twenty-five page limit.

In terms of the manner in which the exhibits were compiled, JPMorgan either submitted full or excerpted portions of individual documents, combined deposition transcripts with exhibits referenced at those particular depositions, or combined documents directly linked to a single source or specific subject matter. *See, e.g.,* Wolf Declaration ¶ 4 Exhibit 1 (excerpts of Plaintiffs' Amended Responses to JPMorgan's Requests for Admissions); Exhibit 2 (excerpts from the transcript of and an exhibit from the deposition of Jamie Dimon); Exhibit 15 (excerpts of documents cited in the Examiner's Report). As noted, each exhibit complied with the Court's page limit parameters, and the total number of pages submitted was far less than the total number of pages contemplated by the Order. Moreover, we are not aware of any rule that would prohibit the parties from compiling exhibits in this manner and have seen various precedents from this Court's past cases where parties proceeded in precisely this fashion.¹

In addition, with respect to JPMorgan's reference to documents that already had been docketed, consistent with the Order, JPMorgan limited its citations to docketed sources that had been previously made part of the record and that the Court could easily identify and access. *See, e.g.,* Statement of Undisputed Facts in Support of JPMorgan's Motion for Summary Judgment ¶ 1(e) (ECF No. 51) (Clearance Agreement, *Lehman Bros. Holdings Inc. v. JPMorgan Chase Bank, N.A.*, No. 11-06760 (S.D.N.Y. Sept. 27, 2011), ECF No. 3-3).²

Accordingly, JPMorgan respectfully submits that it is in full compliance with the Order. Of course, we have no objection to plaintiffs having the same opportunity to submit exhibits in a similar manner in their response to JPMorgan's motion for summary judgment.

¹ *See, e.g.,* Exhibits to the Declaration of Holly Rich, *Harley v. Mineral Techs. Inc.*, No. 13-00954 (S.D.N.Y. 2013), ECF No. 50; Exhibits to the Declaration of Neal Jacobson, *SEC v. Amerindo Invest. Advisors Inc.*, No. 05-05231 (S.D.N.Y. 2012), ECF No. 248; Exhibits to the Declaration of Judith A. Archer, *Clipper Wonsild Tankers Holding A/S et al. v. Biodiesel Ventures, LLC*, No. 09-09092 (S.D.N.Y. 2011), ECF No. 36; Exhibits to the Declaration of Rebecca J. Osborne, *Gioia et al. v. Forbes Media LLC*, No. 09-06114 (S.D.N.Y. 2010), ECF No. 42; Exhibits to the Declarations of Norman C. Simon and Ariel P. Cannon, *Levion v. Société Générale*, No. 09-05800 (S.D.N.Y. 2010), ECF Nos. 33, 41.

² We note that plaintiffs similarly referenced several docketed sources, including an 88-page brief previously filed in the Bankruptcy Court. *See* Plaintiffs' Memorandum of Law in Support of Their Motion for Summary Judgment, at 18 n.47 & 33 (ECF No. 59) (citing and relying upon Plaintiffs' Motion to Dismiss Amended Counterclaims, *Lehman Bros. Holdings Inc. v. JPMorgan Chase Bank, N.A.*, No. 10-03266 (Bankr. S.D.N.Y. Apr. 4, 2011), ECF No. 71).

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We are available at the Court's convenience should the Court wish to hear further from the parties.

Respectfully submitted,

/s/ Paul Vizcarrondo, Jr.

Paul Vizcarrondo, Jr.

cc: Andrew J. Rossman, Esq.
Joseph D. Pizzurro, Esq.